

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Environmental Preservation and Conservation Committee

BILL: CS/SB 144

INTRODUCER: Committee on Environmental Preservation and Conservation and Senator Bullard

SUBJECT: Beach Safety Program

DATE: March 26, 2009

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Wiggins	Kiger	EP	Fav/CS
2. _____	_____	CA	_____
3. _____	_____	GA	_____
4. _____	_____	_____	_____
5. _____	_____	_____	_____
6. _____	_____	_____	_____

Please see Section VIII. for Additional Information:

- | | | |
|------------------------------|--|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="checked" type="checkbox"/> | Statement of Substantial Changes |
| B. AMENDMENTS..... | <input type="checkbox"/> | Technical amendments were recommended |
| | <input type="checkbox"/> | Amendments were recommended |
| | <input type="checkbox"/> | Significant amendments were recommended |

I. Summary:

The CS proposes to amend s. 380.276, F.S., to define the definition of beach and encourage participation in the state's current program that provides uniform warning and safety flags at public beaches. Public beaches will be given priority and are strongly encouraged to request the signs and flags from the Florida Coastal Management Program (FMCP). Private entities will also be allowed to apply for the signs and flags to increase public awareness regarding the ever changing surf conditions. The FCMP at the Department of Environmental Protection (DEP) is authorized to use grant money to establish and operate the safety flag program.

The CS adds ocean lifeguards to the list of persons eligible in s. 784.07, F.S., for enhanced criminal penalties for assault or battery. This addition will increase the maximum sentence that can be imposed for an assault or battery offense committed against a lifeguard in the same manner as if the offense were committed against a law enforcement officer or firefighter.

The CS amends sections 380.276 and 784.07, F.S. The committee substitute amends sections 453.04, 901.15, 943.051, and 985.11, F.S., by inserting conforming language and amends the offense severity chart in section 921.0022, F. S. to include the offense.

This CS will take effect July 1, 2009.

Present Situation:

Currently, the FCMP is housed in DEP, and provides beach warning flags and interpretive signs to local governments and government agencies for display on public beaches and at public beach access points. Funding for the beach safety flag program is provided by an annual grant to the FCMP from the National Oceanic and Atmospheric Administration (NOAA). The FCMP currently spends approximately \$48,000 in annual NOAA grant funds on flags and signs. About 53% of the 129 eligible local governments participate in the program.

Since institution of the beach safety flag program in 2003, FCMP has received inquiries from private entities regarding the flags and signs. Program staff has always informed the private entities that while the FCMP could not provide the flags and signs to private entities, it would provide the name of the vendors that manufacture the flags and signs, and the private entities may order them directly from the vendors.

Currently, s. 784.07, F.S., provides that when a person is charged with knowingly committing assault,¹ aggravated assault², battery,³ or aggravated battery⁴ against a law enforcement officer,⁵ firefighter,⁶ emergency medical care provider,⁷ traffic accident investigation officer, certain nonsworn law enforcement personnel, security officer⁸ traffic infraction enforcement officer, parking enforcement specialist,⁹ or security officer employed by the board of trustees of a

¹ An assault is an intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent. s. 784.011, F.S.

² An aggravated assault is an assault with a deadly weapon without intent to kill or with intent to commit a felony. s. 784.021, F.S.

³ A battery occurs when a person actually and intentionally touches or strikes another person against the will of the other or intentionally causes bodily harm to another person. s. 784.03, F.S.

⁴ An aggravated battery occurs when a person in committing battery intentionally or knowingly causes great bodily harm, permanent disability, or permanent disfigurement; or uses a deadly weapon. Aggravated battery also occurs if the victim of the battery was pregnant at the time of the offense and the offender knew or should have known that the victim was pregnant. s. 784.045, F.S.

⁵ "Law enforcement officer" includes a law enforcement officer, a correctional officer, a correctional probation officer, a parttime law enforcement officer, a part-time correctional officer, an auxiliary law enforcement officer, and an auxiliary Correctional officer, as those terms are respectively defined in s. 943.10, F.S., and any county probation officer; employee or agent of the Department of Corrections who supervises or provides services to inmates; officer of the Parole Commission; and law enforcement personnel of the Fish and Wildlife Conservation Commission, the Department of Environmental Protection, or the Department of Law Enforcement. s. 784.07(1)(a), F.S.

⁶ "Firefighter" means any person employed by any public employer of this state whose duty it is to extinguish fires; to protect life or property; or to enforce municipal, county, and state fire prevention codes, as well as any law pertaining to the prevention and control of fires. s. 784.07(1)(b), F.S.

⁷ "Emergency medical care provider" means an ambulance driver, emergency medical technician, paramedic, registered nurse, physician as defined in s. 401.23, F.S., medical director as defined in s. 401.23, F.S., or any person authorized by an emergency medical service licensed under ch. 401, F.S., who is engaged in the performance of his or her duties. The term "emergency medical care provider" also includes physicians, employees, agents, or volunteers of hospitals as defined in ch. 395, F.S., who are employed, under contract, or otherwise authorized by a hospital to perform duties directly associated with the care and treatment rendered by the hospital's emergency department or the security thereof. s. 784.07(1)(c), F.S.

⁸ s. 493.6101, F.S.

⁹ s. 316.640, F.S.

community college while the officer, firefighter, or emergency medical care provider is engaged in the lawful performance of his or her duties, the assault or battery offense is reclassified as follows:

- In the case of assault, from a misdemeanor of the second degree to a misdemeanor of the first degree.
- In the case of battery, from a misdemeanor of the first degree to a felony of the third degree.
- In the case of aggravated assault, from a felony of the third degree to a felony of the second degree.
- In the case of aggravated battery, from a felony of the second degree to a felony of the first degree.

Reclassifying an offense has the effect of increasing the maximum sentence that can be imposed for an offense. The maximum sentence that can be imposed for a criminal offense is generally based on the degree of the misdemeanor or felony. The maximum sentence for a second degree misdemeanor is sixty days incarceration; for a first degree misdemeanor, it is one year incarceration; for a third degree felony, it is five years imprisonment; for a second degree felony, it is fifteen years imprisonment; and for a first degree felony, it is thirty years imprisonment.¹⁰

II. Effect of Proposed Changes:

Section 1 Amends 380.276, F.S., to define beach to mean any sandy shoreline fronting on the Atlantic Ocean, the Gulf of Mexico, or Straits of Florida that is laterally transverse or customarily used by the public. This revised definition of beach covers all of the beaches in Florida.

The CS also encourages 100 percent participation by all local governments and municipalities in the volunteer uniform warning and safety flag program at all beaches used by the public along Florida's coasts. This CS also opens the grant program to private entities so they can apply for the signs and flags. It asks that at a minimum, the local governments try to display the signs alone if they are not able to place the accompanying flags. Further, to that end, the CS provides for the local governments to be given priority in the application process.

Section 2 Amends section 784.07, F.S., define the term "ocean lifeguard" and adds ocean lifeguards to the scale for increased penalties for assaults on law enforcement agents. This addition will increase the maximum sentence that can be imposed for an assault or battery offense committed against a lifeguard in the same manner as if the offense were committed against a law enforcement officer or firefighter.

Section 3, 4, 6, and 7 Amends ss, 435.04, 901.15, 943.051, and 985.11, F.S., to change certain references from "officers" to "persons".

Section 5 Reenacts section 921.0022, F.S., of the offense severity ranking chart.

Section 8 This act shall take effect July 1, 2009.

¹⁰ s. 775.082, F.S.

III. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

IV. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The general public would benefit from the free placement of beach safety and warning flags and signs on the beaches used by their guests.

C. Government Sector Impact:

The bill would significantly increase the number of beaches upon which local governments could place beach safety flags and interpretive signs. Although the flags and signs would be provided free of charge by the FCMP, the local governments are responsible for the cost of the hardware, poles and materials necessary for mounting the signs and flags.

The FCMP currently spends approximately \$48,000 in annual NOAA grant funds on beach safety flags and signs. According to DEP, currently, about 53% of the 129 eligible local governments participate in the program. If all eligible communities participated under the current program, the cost could grow to approximately \$89,784. Since historically, only 53% of the eligible local governments participate; DEP hasn't had to request more funds from NOAA for the implementation of the program. This legislation encourages all counties to participate so it is difficult to predict the exact increased number of local governments that will request the signs and flags. DEP has indicated that the amount of grant funds available may not cover the increased cost. The number of private entities that would be interested in the flags and signs cannot be determined.

The Criminal Justice Impact Conference which provides the official estimate of the prison bed impact of legislation, estimated when this same bill was filed during the 2008 session would have an insignificant impact on prison beds.

V. Technical Deficiencies:

None.

VI. Related Issues:

None.

VII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Environmental Preservation and Conservation on March 24, 2009:

The original bill broadens the definition of beach to include most private entities and required all of the local government beaches to place these signs and flags under the FCMP.

The CS provides a definition for beach to replace the bill's definition of private beach and strongly encourages all local governments to participate in the FCMP. The CS requires that local governments are given priority when it comes to the FCMP funds but does allow private entities to apply. The CS also adds ocean lifeguards to the scale for increased penalties for assaults on law enforcement agents. This addition will increase the maximum sentence that can be imposed for an assault or battery offense committed against a lifeguard in the same manner as if the offense were committed against a law enforcement officer or firefighter.

B. Amendments:

None.